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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,188	06/01/2001	David C. Mullen	7	2918
34847 7590 02/05/2007 AVAYA INC. 307 MIDDLETOWN-LINCROFT ROAD ROOM 1N-391 LINCROFT, NJ 07738			EXAMINER TO, JENNIFER N	
			ART UNIT 2195	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/05/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/872,188

Applicant(s)

MULLEN, DAVID C.

Examiner

Jennifer N. To

Art Unit

2195

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 20-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-18 and 42-54 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 20-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-18, and 20-54 are pending for examination.
2. The new amended title filed 11/13/2006 is accepted.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 21-37 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

5. Claims 21-37 are rejected under 35 U.S.C. 101 because the claimed invention are directed to apparatus claim, but appearing to be comprised of software alone without claiming associated computer hardware required for execution (the fact that applicant amended the claims to include computer in front of the means did not resolved the issues because the computer software is still software), is not supported by either a specific and substantial asserted utility (i.e., transformation of data) or a well established utility (i.e., a practical application).

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter in which the applicant regards as his invention.

7. Claims 4-5, 21-25, and 40-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. The following terms lacks antecedent basis:

i. the means for combining the determined probabilities – claim 21;

b. The claim language in the following claims is not clearly understood:

i. as per claim 4, line 2, it is uncertain whether the step of “determining a probabilities of availability of each resource” is referred back to the step of “determining a probabilities of availability of each resource” recited in claim 1 (i.e. if it is referred to the recited limitation of claim 1, then it should be revised as “determining the probabilities of availability of each resource).

ii. as per claim 21, lines 10-12, it is not clearly understood what is meant by “means cooperative with the means for combining the determined probabilities, for scheduling for the future point in time no more than the number of new tasks for servicing by the plurality of the resources” (i.e. means for scheduling new tasks for servicing by the plurality of the resources, based upon the number that is the result of the combining).

iii. as per claims 24, 40, they had the same deficiency as claim 4.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 20-21, 23, 25, and 38-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Walker et al. (hereafter Walker) (U.S. Patent No. 5963911).

4. As per claim 1, Walker teaches the invention as claim including a work management method comprising:

for a future point in time, determining a probability of availability of each resources of a plurality of resources at said future point in time (col. 2, lines 1-5; col. 3, lines 3-4; col. 5, lines 58-62; col. 22, lines 55-56);

combining together the determined probabilities of availability of the plurality of resources to obtain a number that is a result of the combining (col. 2, lines 6-7, 55-59; col. 3, lines 10-16; col. 7, lines 32-56); and

using the number to schedule new tasks for the resources for the future point in time (col. 2, lines 10-12, lines 42-61).

5. As per claim 2, Walker teaches that wherein using the number to schedule new tasks comprises scheduling for the future point in time no more than the number of the

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new tasks to become available for servicing by the plurality of the resources (col. 6, lines 15-35; col. 7, lines 37-60).

6. As per claim 3, Walker teaches that wherein combining together the determined probabilities comprises summing the probabilities to obtain the number (col. 2, lines 6-7, 55-59; col. 3, lines 10-16; col. 7, lines 32-56).

7. As per claims 20-21, 23, 25, and 38-39, they are rejected for the same reason as claims 1-3 above.

Allowable Subject Matter

8. Claims 6-18, and 42-54 are allowable.

9. Claims 22, and 26-37 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 101, set forth in this Office action.

10. Claims 4-5, 24, and 40-41 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, and 35 U.S.C. 101, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

11. Applicant's arguments with respect to claims 1-18, and 20-54 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Powell (U.S. Patent No. 4797839), Babayev et al. (U.S. Patent No. 5615121), Svoronos et al. (U.S. Patent No. 5802161), Molloy et al. (U.S. Publication No. 2003/0115244), Clark et al. (U.S. Patent No. 5953229), McPartlan et al. (U.S. Patent No. 6850613), Lee et al. (U.S. Patent No. 5712985), Wacławski (U.S. Patent No. 6574587), Mullen (U.S. Patent No. 7095841), Waleker et al. (WO 95/26535), and Lesaint et al. (WO 98/22897) teach system and method for forecasting availability of resources, and scheduling tasks based upon the availability.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

14. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer N. To whose telephone number is (571) 272-7212. The examiner can normally be reached on M-T 6AM- 3:30 PM, F 6AM- 2:30 PM.

16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jennifer N. To
Examiner
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SUPERVISORY PATENT EXAMINER
ART UNIT 2100